

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John W. Darrah	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 4641	DATE	9/12/2002
CASE TITLE	BANK ONE, N.A. vs. ROCHELLE EVERLY		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

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**DOCKET ENTRY:**

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry]   Status hearing held. Enter Memorandum Opinion And Order. The second amended complaint to foreclose mortgage is dismissed with prejudice.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	LG courtroom deputy's initials	Date/time received in central Clerk's Office	number of notices	Document Number  24
			SEP 13 2002	
			docketing deputy initials	
			date mailed notice	
			mailing deputy initials	

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**BANK ONE, N.A.,**

**Plaintiff,**

**v.**

**ROCHELLE EVERLY, MAURICE F. CODY,  
PACIFIC COAST INVESTMENT CO., UNITED  
STATES OF AMERICA, et al.,**

**Defendants.**

**No. 02 C 4641**

**Judge John W. Darrah**

**MEMORANDUM OPINION AND ORDER**

Plaintiff, Bank One, filed a Second Amended Complaint To Foreclose Mortgage ("Complaint") in the Circuit Court of Cook County against multiple defendants, including the United States of America ("United States"). The United States removed the Second Amended Complaint to this Court and filed the presently pending motion to dismiss. Bank One did not file a response to the motion to dismiss.

In reviewing a motion to dismiss, the court reviews all facts alleged in the complaint and any reasonable inferences drawn therefrom in the light most favorable to the plaintiff. *See Marshall-Mosby v. Corporate Receivables, Inc.*, 205 F.3d 323, 326 (7th Cir. 2000). Dismissal is only warranted if the plaintiff can prove no set of facts in support of its claims that would entitle it to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Bank One filed a complaint to foreclose its mortgage against the real property commonly known as 6806 South Constance Avenue (the "Constance Property"). In May 2002, Bank One filed a Second Amended Complaint. Maurice F. Cody ("Cody") was made a party to terminate his unspecified interest in the Constance Property. Bank One joined the United States to terminate its interest, which the complaint describes as "United States of America, by virtue of a

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*Lis Pendens* recorded 4/18/01 as Document No. 0010316853, U.S. against Maurice Cody, Case 01 CR 261.”

As to the criminal case referred to in the Complaint, on March 20, 2001, the United States filed its indictment against Cody. Pursuant to 18 U.S.C. § 982 and as a result of violations of 18 U.S.C. §§ 1956 and 1957, the indictment sought forfeiture of the Constance Property.<sup>1</sup>

The United States moves to dismiss the Complaint, arguing that this Court lacks subject matter jurisdiction pursuant to 21 U.S.C. § 853(k)(2).

Section 853(k)(2) provides:

Except as provided in subsection (n)<sup>2</sup>, no party claiming an interest in property subject to forfeiture under this section may—

(1) \*\*\*

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

21 U.S.C. § 853(k)(2).

In the instant case, Bank One commenced its foreclosure action against the United States subsequent to the United States’ filing the indictment that alleged the Constance Property was subject to forfeiture. Based on the plain language of Section 853(k)(2), Bank One cannot bring its civil action against the United States. *See Roberts v. United States*, 141 F.3d 1468, 1470 (11th Cir. 1998) (dismissing civil action pursuant to 21 U.S.C. 853(k)(2) because alleged property was subject to criminal forfeiture).

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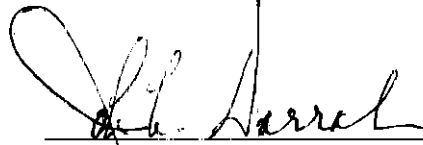
<sup>1</sup> On a motion to dismiss, the court may take judicial notice of court documents which are a matter of public record. *Doherty v. City of Chicago*, 75 F.3d 318, 324 n.4 (7th Cir. 1996).

<sup>2</sup> Subsection (n) allows a third party to challenge a final order of forfeiture entered under Section 853. *See* 21 U.S.C. § 853(n).

Based on the above, the United States' motion to dismiss is granted. The Second Amended Complaint to Foreclose Mortgage is dismissed with prejudice.

Dated:

*September 12, 2002*

A handwritten signature in black ink, appearing to read "John W. Darrah", written over a horizontal line.

JOHN W. DARRAH  
United States District Judge